

Phillip Wm. Lear
Lear & Lear PLLC
808 E South Temple Street
Salt Lake City, UT 84102
Telephone: (801) 538-5000
Facsimile:(801) 538-5001
Email: phillip.lear@learlaw.com
Local Attorney for Linda P. Smith

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LINDA P. SMITH,

Plaintiff

Case No. 1:21-cv-00047-HCN-DBP

v.

LINDA SMITH'S OPPOSITION TO
MOTION TO EXTENT STAY

XAVIER BECERRA, in his capacity
as the Secretary of the United States
Department of Health and Human
Services,

Defendant

Judge Howard Nielson, Jr.
Magistrate Judge Dustin B. Pead

Plaintiff Linda Smith files this opposition to the Secretary's motion to extend the briefing schedule related to fees. *See* Dkt. #65.¹ No efficiency will be achieved by delaying briefing because the briefing will be needed regardless of what the Tenth Circuit does.

By way of background, in accordance with the applicable rules, on January 9, 2023, Mrs. Smith filed a motion for an award of attorneys fees related to appellate fees at the Tenth Circuit. In accordance with this Court's Order, on January 17, 2023, Mrs. Smith also filed a motion for an award of attorneys fees related to activity before this Court.

At the Tenth Circuit, the Secretary filed a motion to remand and to stay fees briefing which, in accordance with the direction of the Tenth Circuit, Mrs. Smith opposed on January 26, 2023. Mrs. Smith pointed out that all the operative facts related to Mrs. Smith's appellate fees occurred *after* this Court entered judgment (e.g., the Secretary's issuance of multiple policy changes in an effort to divest the appellate court of jurisdiction and recanting of the position advanced to this Court that this Court had no power to enjoin illegal, deadly conduct by the Secretary).

As advanced by the Secretary, Mrs. Smith is the "prevailing party" at the District Court but not at the appellate level. Thus, there will have to be separate briefing as to both District Court fees and appellate fees. Further, of course, this

¹ Plaintiff did not oppose the Secretary's request for a one week extension to accommodate counsel. *See* Dkt. #67.

Court has no familiarity with the facts that occurred after entry of judgment. Thus, there is nothing to be gained by waiting on briefing.

The Secretary's motion should be denied.

Dated: January 27, 2023

Respectfully submitted,

PARRISH LAW OFFICES

/s/ James C. Pistorino

James C. Pistorino

Attorneys for Plaintiffs

LEAR & LEAR PLLC

/s/ Phillip Wm. Lear

Phillip Wm. Lear

Attorneys for Plaintiff